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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/625,603	07/26/2000	Keith D. Romack	P00224-US-2 (15435.0001)	8667

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EXAMINER

CHORBAJI, MONZER R

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 12/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

ASH

Office Action Summary	Application No. 09/625,603	Applicant(s) ROMACK ET AL.	
	Examiner MONZER R CHORBAJI	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

This final office action is in response to the amendment received on 09/09/2002

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokuhiro et al (U.S.P.N. 5,030,253) in view of deVries (U.S.P.N. 4,844,874).

With respect to claims 1, 5 and 14, Tokuhiro discloses a method (col.1, line 11-12) and an apparatus (col.1, lines 12-14) including the following: a vaporization chamber (figure 2, 33) having a side wall with an intake port (figure 2, 36), an outlet port (figure 2, 28), both ports allowing a stream of ambient air (figure 1, 26, 25 and 23) to enter and leave through the ports (col.4, lines 22-34), a liquid nozzle (figure 2, 34), a pressurized air nozzle (figure 2, 36), a distribution system (figure 1, 11) with various vapor release ports (figure 4, 12a, 12b, and 47). With regard to having the ports substantially diametrically opposed, Tokuhiro's vaporization chamber in figure 3, has the ports in the floor and the ceiling of the chamber. Also, in figure 2, Tokuhiro teaches that the intake port is in the sidewall of the chamber (36). As a result, whether the ports are located in the sidewalls or the floor and the ceiling of the chamber, such a choice is an engineering concept, which depends on whether a person skilled in the art is interested in increasing the residence time of air and fragrance within the chamber to achieve additional mixing of such components. For example, if residence time is not of interest then the mixed air with fragrance would travel faster by having a chamber with diametrically opposed ports. Furthermore, Tokuhiro discloses a nozzle directed toward the chamber floor (figure 3, 46) and a nozzle directed toward the chamber ceiling (figure 2, 35). However, Tokuhiro fails to teach the use of a spray nozzle receiving a stream of pressurized air. With regard to claims 1, 5 and 14, deVries discloses the use of a spray nozzle (figure, 14, 35, and 15). It would have been obvious to one having ordinary skill

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in the art to modify the method and apparatus of Tokuhiko to include a spray nozzle in order to provide the energy for atomizing the incoming liquid stream (deVries, col.4, lines 34-37).

With respect to claims 2 and 15, both Tokuhiko and deVries fail to disclose the use of a filter in the air intake port. However, the use of filter is known and is well within the scope of a person having ordinary skill in the art.

With respect to claim 3, deVries discloses that the nozzle (figure, 14) is positioned in the chamber ceiling (figure, unlabeled ceiling of chamber 11).

With respect to claims 4 and 16, Tokuhiko's apparatus includes a blower (figure 2, 39 and 23).

With respect to claims 6 and 9, Tokuhiko's nozzle sprays liquid deodorant toward chamber floor (figure 3, 46) and also toward chamber ceiling (figure 2, 35).

With respect to claims 7, 10, 13 and 18, deVries's nozzle is positioned above the outlet port (16). However, with regard to the intake port, deVries states that the outlet is facing the inlet port (col.3, lines 66-68) such that the nozzle is located above both ports in the vaporization chamber.

With regard to claims 8, 11-12 and 17, Tokuhiko's nozzle sprays liquid deodorant in a direction perpendicular to the stream of ambient air (figure 3, 46, 45 and 28).

Response to Arguments

5. Applicant's arguments filed 09/09/2002 have been fully considered but they are not persuasive.

On page 7 of the response, applicant argues, "Tokuhiro does not disclose a vaporization chamber having an intake port positioned on sidewall substantially diametrically opposed to the outlet port of the vaporization chamber". Tokuhiro discloses first embodiment of a vaporization chamber having intake port on the sidewall (36) and a second embodiment of a vaporization chamber having intake and outlet ports diametrically opposed to each other (figure 3, 45 and 28). However, whether the ports are located in the sidewalls or in the floor and the ceiling of the chamber, such a choice is an engineering concept, which depends on whether a person skilled in the art is interested in increasing the residence time of air and fragrance within the chamber to achieve additional mixing of such components or not. For example, if residence time were not of interest then the mixed air with fragrance would travel faster by having a chamber with diametrically opposed ports in the sidewalls of such a chamber. On the other hand, if residence time were of interest then the mixed air with fragrance would travel at lower rate by having an intake port in the sidewall and outlet port in the ceiling of chamber as disclosed in one of the embodiments of Tokuhiro.

On pages 8 and 9, applicant argues, "No suggestion or motivation to combine the references exists because the proposed modification would change the principle of operation of the prior art". The deVries reference was only applied to show that the specific type of spray nozzle is used in neutralizing malodors in a malodorous area and not for affecting the principle of operation of either reference. Furthermore, the motivation is to provide the energy for atomizing the incoming liquid stream (deVries, col.4, lines 34-37).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MONZER R CHORBAJI** whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **ROBERT J WARDEN** can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-7719 for After Final communications.

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10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MRC*
Patent Examiner
AU 1744
November 29, 2002

Robert J. Warden Sr.
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